

Remarks:

Applicants respectfully request reconsideration of the present application in view of the foregoing amendments and in view of the reasons that follow. Claims 148 and 187 have been amended. (Support for the amendments can be found at least in Figs. 1, 3, and 43). Claims 1-147, 149-151, 156, 168, 170-178, and 180-186 have previously been cancelled. No new claims have been added. No new matter has been added. Accordingly, Claims 148, 152-155, 157-160, 164-166, 169, 179, 187-197, 201-203, and 205-218 (50 claims) will be pending in the present application upon entry of this reply and amendment.

A detailed listing of all the claims that are, or were, in the application, irrespective of whether the claims remain under examination in the application, is presented, with an appropriate defined status identifier.

Response to Previous Amendment

On page 2, para. 2 of the Office Action, the Examiner has withdrawn the rejection of Claim 148 because of an apparent inconsistency between the preamble and the body of the claim.

Claim Rejections – 35 U.S.C. § 103

On page 2, para. 5 of the Office Action, the Examiner has rejected Claims 148, 152-155, 157-160, 164-166, 169, 179, 187-197, 201-203, and 205-218 under 35 U.S.C. § 103(a) as being unpatentable over Buchman et al. (US Publication No. 2001/0053253) in view of Stolmeier et al. (US Patent No. 6,257,763), Provan (US Patent No. 6,286,189), May (US Patent No. 5,725,312), Malin (US Patent No. 6,183,134), and McMahon (US Patent No. 6,138,439).

The Examiner states that the claims are rejected for the reasons given in the previous Office Action, mailed February 21, 2008.

Claim 148 of the present application is in independent form and recites a "pre-packaged cheese bag" comprising, in combination with other elements, a "single sheet of web material including a hood defined by a fold located between first and second ends of said hood, said hood also having first and second areas of structural weakness respectively located intermediate said fold and said first and second ends of said hood, said fold being defined by said first and second areas of structural weakness and defining a top of said cheese bag; ... wherein said first and second interlockable fastener tracks of said reclosable fastener structure extend into said hood toward said top of said reclosable bag above said areas of structural weakness ..." Claims 152-155, 157-160, 164-166, and 216 depend from independent Claim 148.

Claim 169 of the present application is in independent form and recites a "reclosable bag for filling with at least one food product" comprising, in combination with other elements, "a single sheet of web material including a first area of structural weakness and a second area of structural weakness; ... said areas of structural weakness being located below said fastener structure ..." Claim 217 depends from independent Claim 169.

Claim 179 of the present application is in independent form and recites a "reclosable bag for filling with at least one food product" comprising, in combination with other elements, "a single sheet of web material including a first area of structural weakness and a second area of structural weakness; said sheet of web material including at least one fold structure located between and defined by said first and second areas of structural weakness, said fold structure defining a top of said reclosable bag; ... said fastener structure extending past said areas of structural weakness and into said fold structure." Claim 218 depends from independent Claim 179.

Claim 187 of the present application is in independent form and recites a "reclosable bag for filling with at least one food product," comprising, in combination with other elements, "a single sheet of web material including a hood defined by a fold

located between said first and second ends of said hood, said hood also having first and second areas of structural weakness respectively located intermediate said fold and said first and second ends of said hood, said fold defining a top of said reclosable bag; ... wherein said first and second interlockable fastener tracks of said reclosable fastener structure extend into said hood toward said top of said reclosable bag above said areas of structural weakness ..." Claims 188-197, 201-203, and 205-211 depend from independent Claim 187.

Claim 212 of the present application is in independent form and recites a "reclosable bag for filling with at least one food product," comprising, in combination with other elements, "a single sheet of web material ... an area of structural weakness located in said hood portion at an intermediate location between said fold and each of said first and second downwardly extending opposite ends; ... wherein at least said first and said interlockable fastener tracks of said reclosable fastener extend above said areas of structural weakness and into the hood, ..." Claim 213 depends from independent Claim 212.

Claim 214 of the present application is in independent form and recites a "reclosable bag for filling with at least one food product," comprising, in combination with other elements, "a single sheet of web material including a hood having first and second ends of said hood and a fold located between said first and second ends of said hood, said hood also having an area of structural weakness located intermediate said first end of said hood and said fold and a second area of structural weakness located intermediate said second end of said hood and said fold, said fold defining a top of said reclosable bag; ... wherein said first and second mating track structures extend above said areas of structural weakness and into said hood toward said top of said reclosable bag ..." Claim 215 depend from independent Claim 214.

The reclosable bag for food product recited in independent Claims 148, 169, 179, 187, 212, and 214 would not have been obvious in view of Buchman et al., alone or in

any proper combination with the other five references cited by the Examiner under 35 U.S.C. § 103(a). Buchman alone or in any proper combination with the other five references do not disclose, teach or suggest that which is disclosed and claimed in the present application. To transform the various bags of Buchman and the other five references into the reclosable bag for a food product as recited in independent Claims 148, 169, 179, 187, 212, and 214 of the present application would require still further modification, and such modification is taught only by the Applicants' own disclosure. The suggestion to make the combination of the six references as identified by the Examiner, has been taken from the Applicants' own Specification (using hindsight), which is improper.

Each independent claim (Claims 148, 169, 179, 187, 212, and 214) of the present application includes limitations that are not disclosed, taught or suggested in the combination required in each of the present application. The limitations include, among other elements:

A single sheet of web material 10, including a hood (Figs. 1, 3, 4, and 59).

First and second areas of structural weakness 12.

The hood defines a top of the bag.

Interlockable tracks of a reclosable fastener 20 structure extending into the hood towards the top of the reusable bag above said areas of structural weakness.

Buchman clearly shows that the hood 60 is a separate piece of material and not formed with the bag from a single sheet of web material as required by each of the independent claims of the present application.

Further, the Examiner cites Buchman for teaching perforations and cites Fig. 7, item 60 in para. 0067 of Buchman. Applicants submit that Fig. 7 of Buchman shows (teaches) a separate hood 60 and DOES NOT illustrate any perforations. In fact, Buchman does not show perforations in any of the figures. Accordingly, Buchman can't be cited for teaching perforations (structural weakness) below the zipper assembly as

required in each of the independent claims of the present application. The Examiner's assertion that Buchman teaches perforations is merely speculative as to where the alleged perforations are located. Such speculation is not *prima facie* obviousness. There is no teaching, text or illustration, in Buchman which shows perforations or structural weakness located in a hood below the zipper assembly as required in each of the independent claims of the present application.

The Examiner further cited Stolmeier et al. and McMahon for teaching the reclosable fasteners are above the area of structural weakness. Applicants submit that Stolmeier et al. teaches a separate hood 60, much like Buchman and therefore the structural weaknesses are not in the single sheet web material required in each of the independent claims of the present application. McMahon, in Fig. 19 cited by the Examiner, illustrates the bottom of the bag and the perforations positioned above the reclosable feature. Such orientation is completely opposite of what is required in each of the independent claims of the present application.

Applicants submit that there is no teaching or even a suggestion in any of the cited prior art to provide a structure and function as disclosed and claimed in the present application.

The Examiner cited May for teaching a bag that comprises a hood which is made from a single sheet of continuous web material.

However, Applicants submit that all of the examples shown and described in May show a top film (12, 52, 82, 102, 122, 212, 312, and 314) and a bottom film (14, 54, 84, 104, 124, 114, 314, and 344) that are joined together. In all of May there are only two instances, in passing, where May suggests that a single sheet may be used to form the bag. One ordinarily skilled in the art of reclosable bags for food product would read May as teaching that two web materials are needed to form the bag and hood and that any structural weakness in the bag material is above the reclosable feature as illustrated in Figs. 2, 6, 8, 10, 12, 14, 16, 18, 21, and 24 of May. Applicants submit that such teaching

of May is not *prima facie* obviousness that a single web material can be used to form a bag and hood with a zipper structure confined in the hood with structural weaknesses in the hood below the zipper structure as disclosed and claimed in the present application.

Applicants submit that the Examiner is relying on hindsight to make the above obviousness rejections of the cited claims under 35 U.S.C. § 103(a). Further, the Examiner has, during the prosecution of this application, used elements and features from at least six different references (Buchman et al., Stolmeier et al., Provan, May, Malin, and McMahon) to support the rejection of the Applicants' claims. Applicants believe that the Examiner is basing the rejections on the mere identification in the prior art of individual components of claimed limitations in the present application. The Examiner has not made particular findings as to the reason a skilled artisan, with no knowledge of the claimed invention, would have selected the components for a combination in the matter claimed in the present application. Applicants submit that all the words in the claim must be considered in judging the patentability of a claim against the prior art. See MPEP §2143.03. Further, since the Examiner has to rely on elements from six different prior art documents it does not render the claims of the present application *prima facie* obvious. See MPEP §2143.01VI.

The reclosable food bag recited in each of the independent claims of the present application, considered as a whole, would not have been obvious in view of Buchman and/or the other five prior art references. The rejection of independent Claims 148, 169, 179, 187, 212, and 214 over Buchman in view of the other five prior art references under 35 U.S.C. § 103(a) is improper. Therefore, Claims 148, 169, 179, 187, 212, and 214 are patentable.

Dependent Claims 152-155, 157-160, 164-166, and 216 which depend from independent Claim 148; dependent Claim 217 which depends from independent Claim 169; dependent Claim 218 which depends from independent Claim 179; dependent Claims 188-197, 201-203, and 205-211 which depend from independent Claim 187;

dependent Claim 213 which depends from independent Claim 212; and dependent Claim 215 which depends from independent Claim 214, are also patentable. See 35 U.S.C. § 112, para. 4.

The Applicants respectfully request withdrawal of the rejection of Claims 148, 152-155, 157-160- 164-166, 169, 179, 187-197, 201-203, and 205-218 under 35 U.S.C. § 103(a).

On page 3, para. 6 of the Office Action the Examiner has rejected Claims 161-163, 187, 198-200, and 204 under 35 U.S.C. § 103(a) as being unpatentable over the references cited in para. 5 of the Office Action, and in further view of Hayashi (US Patent No. 6,074,097). In response, Applicants note that Claims 161-163 and 167 depend from independent Claim 148, and Claims 198-200 and 204 depend from independent Claim 187. Applicants reiterate their comments concerning the prior art cited in para. 5 of the Office Action as set forth above, as if set forth fully herein. Since Applicants believe that independent Claim 148 and independent Claim 187 are patentable over the cited art, the claims that depend from such independent claims are also patentable. Accordingly, since Claims 161-163 and 167 which depend from independent Claim 148 and Claims 198-200 and 204 depend from independent Claim 187, such dependent claims are also patentable. See 35 U.S.C. § 112, para. 4. Accordingly, Applicants respectfully request the withdrawal of the rejection of Claims 161-163, 167, 198-200, and 204 under 35 U.S.C. § 103(a).

On page 3, para. 7 of the Office Action the Examiner has rejected Claims 148, 152-155, 157-160, 164-166, 169, 179, 187-197, 201-203, and 205-218 under 35 U.S.C. § 103(a) as being unpatentable over Thomas et al. (US Patent No. 6,148,588) in view of Buchman et al. (US Publication No. 2001/0053253) in view of Stolmeier et al. (US Patent No. 6,257,763), Provan (US Patent No. 6,286,189), May (US Patent No. 5,725,312), and Malin (US Patent No. 6,183,134).

The Examiner states that the claims are rejected for the reasons given in the

previous Office Action, mailed February 21, 2008.

Claim 148 of the present application is in independent form and recites a "pre-packaged cheese bag" comprising, in combination with other elements, a "single sheet of web material including a hood defined by a fold located between first and second ends of said hood, said hood also having first and second areas of structural weakness respectively located intermediate said fold and said first and second ends of said hood, said fold being defined by said first and second areas of structural weakness and defining a top of said cheese bag; ... wherein said first and second interlockable fastener tracks of said reclosable fastener structure extend into said hood toward said top of said reclosable bag above said areas of structural weakness ..." Claims 152-155, 157-160, 164-166, and 216 depend from independent Claim 148.

Claim 169 of the present application is in independent form and recites a "reclosable bag for filling with at least one food product" comprising, in combination with other elements, "a single sheet of web material including a first area of structural weakness and a second area of structural weakness; ... said areas of structural weakness being located below said fastener structure ..." Claim 217 depends from independent Claim 169.

Claim 179 of the present application is in independent form and recites a "reclosable bag for filling with at least one food product" comprising, in combination with other elements, "a single sheet of web material including a first area of structural weakness and a second area of structural weakness; said sheet of web material including at least one fold structure located between and defined by said first and second areas of structural weakness, said fold structure defining a top of said reclosable bag; ... said fastener structure extending past said areas of structural weakness and into said fold structure." Claim 218 depends from independent Claim 179.

Claim 187 of the present application is in independent form and recites a "reclosable bag for filling with at least one food product," comprising, in combination

with other elements, "a single sheet of web material including a hood defined by a fold located between said first and second ends of said hood, said hood also having first and second areas of structural weakness respectively located intermediate said fold and said first and second ends of said hood, said fold defining a top of said reclosable bag; ... wherein said first and second interlockable fastener tracks of said reclosable fastener structure extend into said hood toward said top of said reclosable bag above said areas of structural weakness ..." Claims 188-197, 201-203, and 205-211 depend from independent Claim 187.

Claim 212 of the present application is in independent form and recites a "reclosable bag for filling with at least one food product," comprising, in combination with other elements, "a single sheet of web material ... an area of structural weakness located in said hood portion at an intermediate location between said fold and each of said first and second downwardly extending opposite ends; ... wherein at least said first and said interlockable fastener tracks of said reclosable fastener extend above said areas of structural weakness and into the hood, ..." Claim 213 depends from independent Claim 212.

Claim 214 of the present application is in independent form and recites a "reclosable bag for filling with at least one food product," comprising, in combination with other elements, "a single sheet of web material including a hood having first and second ends of said hood and a fold located between said first and second ends of said hood, said hood also having an area of structural weakness located intermediate said first end of said hood and said fold and a second area of structural weakness located intermediate said second end of said hood and said fold, said fold defining a top of said reclosable bag; ... wherein said first and second mating track structures extend above said areas of structural weakness and into said hood toward said top of said reclosable bag ..." Claim 215 depend from independent Claim 214.

The reclosable bag for food product recited in independent Claims 148, 169, 179,

187, 212, and 214 would not have been obvious in view of Thomas et al., alone or in any proper combination with the other five references cited by the Examiner under 35 U.S.C. § 103(a). Thomas alone or in any proper combination with the other five references do not disclose, teach or suggest that which is disclosed and claimed in the present application. To transform the various bags of Thomas and the other five references into the reclosable bag for a food product as recited in independent Claims 148, 169, 179, 187, 212, and 214 of the present application would require still further modification, and such modification is taught only by the Applicants' own disclosure. The suggestion to make the combination of the six references as identified by the Examiner, has been taken from the Applicants' own Specification (using hindsight), which is improper.

Each independent claim (Claims 148, 169, 179, 187, 212, and 214) of the present application includes limitations that are not disclosed, taught or suggested in the combination required in each of the present application. The limitations include, among other elements:

A single sheet of web material 10, including a hood (Figs. 1, 3, 4, and 59).

First and second areas of structural weakness 12.

The hood defines a top of the bag.

Interlockable tracks of a reclosable fastener 20 structure extending into the hood towards the top of the reusable bag above said areas of structural weakness.

Thomas clearly shows that there is no hood and no hood formed with the bag from a single sheet of web material as required by each of the independent claims of the present application.

Further, the Examiner cites Thomas for teaching his "skirt structure having a distal portion." Applicants submit that Thomas does not have a skirt structure as disclosed in the present application. The element identified by the Examiner as a skirt structure in Thomas is described in Thomas as being fins 30, 34 which are made out of the same material as the reclosable fastener 23. Further, the fin structure 30, 34 define ribs 36, 38.

It is the ribs of Thomas that are attached to the bag sides and not the fins. See at least Figs. 4 and 7 of Thomas. In contrast, the present application discloses skirts 16 that comprise two strips on pieces of plastic film which are then sealed directly to the bag sides. See at least Figs. 3 and 43 of the present application and the text on page 29, lines 18-24 of the Specification as originally filed.

The Examiner also states "the claims differ from Thomas et al. in reciting wherein the bag comprises a hood structure." The Examiner goes on to state that Buchman et al. is relied on to teach the concept of a hood for purposes of providing tamper evidence.

Applicants submit that Thomas does not require nor does it suggest that a hood structure should be applied to provide tamper evidence. Thomas already discloses a tamper evidence structure as element 40 (see Fig. 4 of Thomas and col. 6, lines 56-61) where Thomas states that "to provide tamper evidence, the lower most ends of the first and second fins 30 and 34 are joined to each other along a line of weakness 40 to effectively create a single fin comprised of the first and second fins 30 and 34."

Accordingly, one ordinarily skilled in the art would not look to modify Thomas for purposes of tamper evidence by adding a separate hood structure as taught by Buchman and as suggested by the Examiner. Adding a Buchman hood which is a separate structure to Thomas would be a duplication of tamper evidence structure and further does not provide a bag and hood structure composed of a single web material as required in each of the independent claims of the present application.

The Examiner's suggestion to add a separate Buchman hood to Thomas' device as a tamper evidence structure would require elimination of the Thomas' tamper evidence device 40 or add the Buchman hood to the Thomas tamper evidence device 40 thereby adding costs. In either case that is not *prima facie* obviousness of what is disclosed and claimed in the present application.

Accordingly, the combination of Thomas and Buchman and the other cited pieces of prior art does not provide *prima facie* obviousness of what is disclosed and claimed in

the present application.

Applicants reiterate their comments with respect to Buchman et al., Stolmeier et al., Provan, May, and Malin as set forth above herein as if fully set forth herein.

Applicants submit that the Examiner is relying on hindsight to make the above obviousness rejections of the cited claims under 35 U.S.C. § 103(a). Further, the Examiner has, during the prosecution of this application, used elements and features from at least six different references (Thomas et al., Buchman et al., Stolmeier et al., Provan, May, and Malin) to support the rejection of the Applicants' claims. Applicants believe that the Examiner is basing the rejections on the mere identification in the prior art of individual components of claimed limitations in the present application. The Examiner has not made particular findings as to the reason a skilled artisan, with no knowledge of the claimed invention, would have selected the components for a combination in the matter claimed in the present application. Applicants submit that all the words in the claim must be considered in judging the patentability of a claim against the prior art. See MPEP §2143.03. Further, since the Examiner has to rely on elements from six different prior art documents it does not render the claims of the present application *prima facie* obvious since the Examiner is ignoring limitation in the present claims and/or eliminating features of the cited prior art that makes the prior art inoperative for its intended purpose. See MPEP §2143.01VI.

The reclosable food bag recited in each of the independent claims of the present application, considered as a whole, would not have been obvious in view of Thomas and/or the other five prior art references. The rejection of independent Claims 148, 169, 179, 187, 212, and 214 over Thomas in view of the other five prior art references under 35 U.S.C. § 103(a) is improper. Therefore, Claims 148, 169, 179, 187, 212, and 214 are patentable.

Dependent Claims 152-155, 157-160, 164-166, and 216 which depend from independent Claim 148; dependent Claim 217 which depends from independent Claim

169; dependent Claim 218 which depends from independent Claim 179; dependent Claims 188-197, 201-203, and 205-211 which depend from independent Claim 187; dependent Claim 213 which depends from independent Claim 212; and dependent Claim 215 which depends from independent Claim 214, are also patentable. See 35 U.S.C. § 112, para. 4.

The Applicants respectfully request withdrawal of the rejection of Claims 148, 152-155, 157-160- 164-166, 169, 179, 187-197, 201-203, and 205-218 under 35 U.S.C. § 103(a).

On page 4, para. 8 of the Office Action the Examiner has rejected Claims 161-163, 187, 198-200, and 204 under 35 U.S.C. § 103(a) as being unpatentable over the references cited in para. 7 of the Office Action, and in further view of Hayashi (US Patent No. 6,074,097). In response, Applicants note that Claims 161-163 and 167 depend from independent Claim 148, and Claims 198-200 and 204 depend from independent Claim 187. Applicants reiterate their comments concerning the prior art cited in para. 5 of the Office Action as set forth above, as if set forth fully herein. Since Applicants believe that independent Claim 148 and independent Claim 187 are patentable over the cited art, the claims that depend from such independent claims are also patentable. Accordingly, since Claims 161-163 and 167 which depend from independent Claim 148 and Claims 198-200 and 204 depend from independent Claim 187, such dependent claims are also patentable. See 35 U.S.C. § 112, para. 4. Accordingly, Applicants respectfully request the withdrawal of the rejection of Claims 161-163, 167, 198-200, and 204 under 35 U.S.C. § 103(a).

Response to Examiner's Arguments

On page 4, para. 9 of the Office Action, the Examiner states that the rejection under U.S.C. § 112, second paragraph relative to the location of the first and second ends of the hood have been withdrawn.

On pages 4 and 5, paras. 10 and 11 of the Office Action, the Examiner discusses the applicability of Buchman et al. as a reference relative to Applicants' arguments that Buchman and several other of the cited prior art is not available as prior art because of priority dates.

At this time, Applicants choose not to comment on the Examiner's argument but have addressed the prior art substantively without regard to the priority date issue. Applicants reserve the right to provide argument relative to priority applicability of the cited prior art, if necessary, at a later date.

On pages 5 and 6, paras. 12 and 13, the Examiner comments on Applicants' prior argument that the Examiner's allegation as to the location of structural weaknesses would have been obvious. The Examiner states that both the references to Stolmeier et al. (Fig. 7, item 72) and McMahon et al. (Fig. 19, item 132) has been relied on for teaching of location of structural weaknesses.

In response, as stated above (see page 21), Stolmeier does not teach that the structural weakness is in a single web material that forms the bag and hood as disclosed and claimed in the present application. Further, as Applicants have stated above, McMahon, in Fig. 19 cited by the Examiner clearly shows the structural weakness 132 being above the zipper structure 44 at the bottom of the bag. That is completely opposite of that which is disclosed and claimed in the present application. The Examiner must read all of the limitations in the present claims when evaluating the cited prior art. (See MPEP section cited above). Accordingly, the prior art, as cited by the Examiner, does not show what is disclosed and claimed in the present application relative to structural weakness in a single web material forming a bag and hood structure.

* * *

It is submitted that each outstanding rejection to the application has been overcome, and that the application is in a condition for allowance. The Applicant respectfully requests consideration and allowance of all the pending claims.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

Respectfully submitted:

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